

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 8-2002:

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|---------------------------|---|------------------------------|
| BOULDER ELEMENTARY |) | Case No. 883-2002 |
| DISTRICT/JEFFERSON COUNTY |) | |
| HIGH SCHOOL DISTRICT, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | FINDINGS OF FACT; |
| |) | CONCLUSIONS OF LAW; |
| |) | AND RECOMMENDED ORDER |
| BOULDER TEACHERS |) | |
| ASSOCIATION/BOULDER |) | |
| ASSOCIATION OF CLASSIFIED |) | |
| PERSONNEL, MEA-MFT |) | |
| |) | |
| Respondent. |) | |

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I. INTRODUCTION

On November 15, 2001, the Boulder Elementary School District and the Jefferson County High School District (the Districts) filed a petition to divide the two existing bargaining units into four units: A unit consisting of teaching (certified) employees of the High School District; a unit consisting of non-teaching (classified) employees of the High School District; a unit consisting of certified employees of the Elementary District; and a unit consisting of classified employees of the Elementary District. The Districts' basis for the request is that the Boulder School Boards are two separate entities, where each Board has complete local control. As such, the Districts contend that with two legal employers, the community of interest for the bargaining units has changed. The current bargaining units consist of a unit of certified employees employed by both entities, and a unit of classified employees employed by both entities.

The representative of the bargaining units, Boulder Teachers Association and the Boulder Association of Classified Employees, MEA-MFT (the Locals), filed an answer to the petition on November 29, 2001, objecting to the division on the

following bases: 1) There is no justification for splitting the two units as requested; 2) the community of interest is unchanged with the creation of two Boards; 3) the unit clarification requested is more akin to a decertification and the Districts have no legal basis for initiating decertification; and 4) the units wish to consolidate rather than fractionalize.

On behalf of the Board of Personnel Appeals, Department of Labor and Industry Hearing Officer Bernadine Warren conducted a contested case hearing on July 10, 2002. The hearing concluded on July 19, 2002. Richard Larson, attorney, represented the Locals. Deborah Silk, attorney, represented the Districts.

Lance Peeler, Bob Ekblom and Jane Bilodeau (aka Jane Fields) testified on behalf of the Locals. Gary Craft, Gerald Craft, Andy Sever, and Stan Senechal testified on behalf of the Districts. The Hearing Officer admitted the Districts' exhibits 1, 2, 4, 5, 7 and 8 into the record without objection. She admitted the Districts' exhibit 3 into the record over the Local's objection that it was a new form and irrelevant to the issue. The Locals were to provide the Hearing Officer a copy of its exhibit A no later than August 2, 2002. The Districts had no objection to the admission of the proposed exhibit A. However, the Hearing Officer did not receive the exhibit. Thus, the record closed without the admission of Locals exhibit A.

The Locals filed a petition for affiliation on October 18, 2001, Case No. 808-2002. Due to the close relationship to the instant case, the parties agreed to combine both the unit clarification petition and the unit affiliation petition in one hearing. However, the two issues will be decided separately.

II. ISSUE

Whether a unit established for collective bargaining purposes is appropriate pursuant to § 39-31-202, MCA.

III. FINDINGS OF FACT

1. The MEA/MFT is a "labor organization" within the meaning of § 39-31-103(6), MCA.

2. School Districts 1 and 7 are comprised of the Boulder Elementary School (District 7) and the Jefferson County High School (District 1). Each entity has a separate school board.

3. Employees of each entity are currently represented by one of two bargaining units. The certified bargaining unit, which covers teaching employees, is the Boulder Teacher's Association. The classified bargaining unit, which covers non-teaching staff, is the Boulder Association of Classified Employees. Both units have elected to be represented by the MEA/MFT.

4. The two school boards communicate and interact to a substantial degree. Each year, the two boards negotiate with the Locals on contracts for either certified or classified employees. Sometimes the two contracts expire in alternate years, and other times the two contracts expire during the same year.

5. The two school boards have a shared committee, in place for more than nine years, called the "negotiation committee." The negotiation committee is comprised of two members from the High School board, and two members from the Elementary School board. The negotiation committee meets with representatives from each local to renegotiate a contract. Historically, the two bargaining units negotiate separately with the negotiation committee, but frequently during the same time period. The Elementary School typically has a much smaller budget than the High School. Because the school boards combine for contract negotiation purposes, the smaller budget is used to determine any salary or benefit increases or decreases. At times the High School Board has wanted to approve ratification of a particular contract, which the Elementary School Board has not. This has caused substantial delays of final ratification. The certified employee contract is typically ratified first. The classified Local usually applies the same pay raises or benefit increases ratified on the certified contract to the classified contract. Other contractual issues, such as working terms and conditions, are bargained for separately.

6. Some certified employees and some classified employees work for both the High School and the Elementary School. Each entity pays the worker for the portion of work provided by the worker to the entity. These "shared employees" are supervised by each entity during the time the worker is providing services to each entity.

7. Gary Craft is the clerk for both the High School and the Elementary School. Each entity pays for half his salary. Dr. Linthicum is the Superintendent for both schools. He also is paid partly by the High School and partly by the Elementary School. Until recently, both Craft and Linthicum received checks from both entities. However, new software has allowed issuance of one paycheck, but charges the

appropriate salary amount to each entity. Craft and Linthicum receive instructions and supervision from both boards. They each attend both board meetings.

8. Certified employees work 187 days a year. Classified employees generally work under a work agreement, depending upon the type of work required. A classified employee may work full time, work part time, work only when school is in session, or work more days than school is in session.

9. The Districts provide the same faculty handbook to certified staff of both Districts. The Districts provide the same personnel manual to both certified and classified staff of both Districts.

10. Certified employees of both Districts are paid according to the employee's level of education and years of service, as outlined in the certified employee collective bargaining agreement. Certified employees do not receive holiday pay.

11. Classified employees of both Districts are paid according to the type of work performed, such as cooking or custodial work, and longevity. Classified employees receive payment for specified holidays.

12. Certified employees of both Districts receive 10 days of sick leave, five days of bereavement leave, professional leave, and three days personal leave, all paid at full salary. Classified employees of both Districts earn sick leave as provided by state law for public employees.

13. The Districts provide a higher paid premium for insurance coverage for certified employees than for classified employees.

14. Reduction in force procedures for certified employees differ from those for classified employees.

15. In late 2001, certified and classified employees of both Districts voted to consolidate the two existing bargaining units into one unit. They subsequently filed an affiliation petition with the Board.

IV. DISCUSSION

The Districts seek a determination that the two existing bargaining units be divided into four units: a certified unit for High School employees; a classified unit for High School employees; a certified unit for Elementary School employees; and a classified unit for Elementary School employees. The Locals argue that rather than requesting unit clarification, the Districts are, in effect, requesting decertification.

Montana law gives public employees the right of self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities. § 39-31-201, MCA. The law further authorizes the Board of Personnel Appeals (Board) to decide what units of public employees are appropriate for collective bargaining purposes. § 39-31-202, MCA. The Montana Supreme Court has approved the use of federal court and National Labor Relations Board (NLRB) decisions as precedent when interpreting the Montana Collective Bargaining for Public Employees Act. State ex rel Board of Personnel Appeals v. District Court, 183 Mont. 223, 598 P.2d 1117, 103 LRRM 2297 (1979); Teamsters Local No. 45 v. State ex rel Board of Personnel Appeals, 195 Mont. 272, 635 P.2d 1310, 110 LRRM 2012 (1981); City of Great Falls v. Young (Young III), 2110 Mont. 13, 686 P.2d 185, 119 LRRM 2682 (1984).

The NLRB's primary concern is to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment. It need not determine the only appropriate unit, or the ultimate unit, or the most appropriate unit: The Act requires only that the unit be appropriate. Morand Bros. Beverage Co., 91 NLRB 409, 408, 26 LRRM 1501 (1950), *enforced*, 190 F.2d 576, 28 LRRM 2364, CA 7 (1951).

In determining whether a unit is appropriate for collective bargaining purposes, the Board considers factors such as community of interest, wages, hours, fringe benefits, other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees. Community of interest is the fundamental factor in bargaining unit determinations where an attempt is being made to sever groups of already represented employees from larger bargaining units. Kalamazoo Paper Box Corp., 136 NLRB 134, 49 LRRM 1705 (1962). In Kalamazoo, *supra*, the Board enumerated the factors to be considered in determining community of interest apart from other employees: "[A] difference in method of wages or compensation; different

hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs. . . .; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.”

In the present case, the methods of compensation, hours of work, employment benefits, job functions, personnel policies, and history of collective bargaining for classified employees of both Districts are identical. The same is true for certified employees of both Districts. This pattern has remained in place for a number of years. Further, both classified and certified employees have no interest or desire in fractionalizing the current two bargaining units into four units. Under these conditions, then, the current two bargaining units are appropriate.

V. CONCLUSIONS OF LAW

The Board of Personnel Appeals has jurisdiction over this matter pursuant to § 39-31-207, MCA.

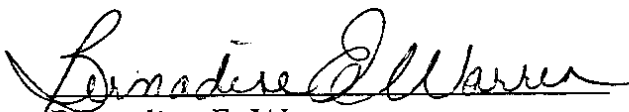
The current two bargaining units are appropriate.

VI. RECOMMENDED ORDER

The request of the Districts that the current two bargaining units be expanded into four units is denied.

DATED this 24th day of September, 2002.

BOARD OF PERSONNEL APPEALS

By: 
Bernadine E. Warren
Hearing Officer
Department of Labor and Industry

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing documents were, this day served upon the following parties or such parties' attorneys of record by depositing the same in the U.S. Mail, postage prepaid, and addressed as follows:

Debra Silk
Attorney at Law
Montana School Boards Association
One South Montana Avenue
Helena, MT 59601

Richard Larson
Attorney at Law
Chronister, Moreen & Larson, PC
P.O. Box 1152
Helena, MT 59624

DATED this 21th day of September, 2002.

Sandy Duncan